

EXHIBIT 11

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 *****

4 CYCLE-CRAFT CO., INC., d/b/a*
5 BOSTON HARLEY-DAVIDSON/BUELL*
6 Plaintiff, *

7 v.

8 HARLEY-DAVIDSON MOTOR CO., *
9 INC., AND BUELL DISTRIBUTION*
10 CO., LLC *

11 Defendant. *

12 *****

*CIVIL ACTION
*NO. 04-11402-NMG

COPY

13 DEPOSITION OF AL CONTOIS14 Deposition taken by agreement of counsel
15 in the Daniel Webster Conference Room at
16 the Sheraton Harborside Portsmouth Hotel,
17 250 Market St., Portsmouth, New Hampshire,
18 on Friday, June 17, 2005, commencing at
19 9:00 a.m.20 Court Reporter: Sonia E. Bishop, CCR

21 DAVID R. JORDAN & ASSOCIATES

22 Certified Court Reporters

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DAVID R. JORDAN & ASSOCIATES

1 unclear, please let me know, and I will try to
2 rephrase the question so that it's
3 understandable.

4 Do you understand that?

5 A. Yes.

6 Q. If you need to take a break at any time, we can
7 do that. I would like you just to finish any
8 question that's pending before we take a break.

9 Do you understand that?

10 A. Yes.

11 Q. Okay. Now, you're represented here today by
12 counsel, correct?

13 A. Correct.

14 Q. And who is the attorney representing you today?

15 A. Bill Benson.

16 Q. And you understand that he also represents
17 Harley-Davidson Motor Company?

18 A. Yes.

19 Q. That's your former employer?

20 A. Correct.

21 Q. And your current employer is?

22 A. Seacoast Harley-Davidson.

23 Q. And what's Seacoast Harley-Davidson's address?

1 A. 17 Lafayette Road, North Hampton,
2 New Hampshire.

3 Q. Is North Hampton in the Portsmouth area?

4 A. Yes.

5 Q. And what is your residential address?

6 A. 9 Chestnut Way, Stratham, New Hampshire.

7 Q. And is Stratham south of Portsmouth?

8 A. Yes.

9 Q. How long have you worked at Seacoast
10 Harley-Davidson?

11 A. Since August of last year.

12 Q. August of '04?

13 A. Yes.

14 Q. And prior to that, what did you do?

15 A. I was a district manager for Harley-Davidson
16 Motor Company.

17 Q. For how long were you district manager for
18 Harley-Davidson?

19 A. Approximately eight, nine years.

20 Q. Did you work in the same district the entire
21 eight or nine years?

22 A. No.

23 Q. What districts did you work in during your

1 eight or nine years as district manager?

2 A. Originally I was in eastern Pennsylvania, New
3 York, New Jersey and Connecticut.

4 Q. For approximately how long?

5 A. About seven years.

6 Q. And after that?

7 A. I went to Harley corporate, Juneau Avenue,
8 worked in the offices.

9 Q. What did you do at Harley corporate?

10 A. I was manager of performance consulting.

11 Q. How long did you do that?

12 A. For two and a half years, three years.

13 Q. And what did you do after that?

14 A. Then I came back to a district manager role.

15 Q. And that would be for the district that
16 includes Boston?

17 A. Correct.

18 Q. And how long were you the district manager for
19 the area that includes Boston?

20 A. A year and a half, approximately.

21 Q. What did you do before you were a
22 Harley-Davidson district manager for work?

23 A. I was working for Hershey Foods.

1 expressed in the dealer contract is the same as
2 the policy that is handed out every year in a
3 manual, as you testified?

4 MR. BENSON: Objection.

5 MR. REHNQUIST: Basis?

6 MR. BENSON: Foundation.

7 BY MR. REHNQUIST:

8 Q. You can answer the question.

9 A. Yes.

10 Q. So in other words, your understanding is that
11 the -- the policy as it exists in the dealer
12 contract is the same as the policy that is
13 distributed every year?

14 A. That's what I believe.

15 Q. Are you aware of -- well, withdraw.

16 During the period that you were a district
17 manager in the eastern Pennsylvania district --
18 just to make it simpler, what's the name of
19 that district, the eastern Pennsylvania, New
20 York? Is there a number for that or something?

21 A. District 4.

22 Q. And then the New England district is District
23 1?

1 A. District 1.

2 Q. While you were district manager in District 4,
3 do you recall that the nonretail sales policy
4 changed at any time during the period when you
5 were district manager in District 4?

6 A. No.

7 Q. Do you recall whether the policy ever changed
8 during the one and a half years you were
9 district manager in District 1?

10 A. No.

11 Q. Did you ever receive any training from
12 Harley-Davidson regarding the non-retail sales
13 policy?

14 A. No.

15 Q. Do you recall that it was explained to you or
16 you saw it when you first joined the company,
17 and that was it?

18 A. Yes.

19 Q. What is your understanding as you sit here
20 today of the non-retail sales policy?

21 A. That you have to sell a motorcycle to the end
22 user.

23 Q. Are there any other requirements as you sit

1 here today that you -- withdrawn.

2 Are there any other requirements of the
3 non-retail sales policy, to your knowledge?

4 MR. BENSON: Objection to form, foundation.

5 THE WITNESS: I'm not sure I understand.

6 BY MR. REHNQUIST:

7 Q. Are you aware of any other requirements of the
8 non-retail sales policy except the one
9 requirement that you've just said that a
10 motorcycle can only be sold to an end user?

11 MR. BENSON: Objection to form.

12 THE WITNESS: No.

13 BY MR. REHNQUIST:

14 Q. Mr. Contois, have you done anything to prepare
15 for your deposition today?

16 A. No.

17 Q. Did you meet with Mr. Benson or any of his
18 colleagues from his law firm at any point prior
19 to today?

20 A. Yes.

21 Q. When did you first meet with Mr. Benson or any
22 of his colleagues?

23 A. Yesterday.

1 MR. REHNQUIST: Just so it's clear. And
2 I'll give you a chance to instruct, but I want
3 to pose a question just so it's clear.

4 Do you recall any discussion at this
5 meeting, Mr. Contois, about any possible
6 sanction that would be imposed upon Boston
7 Harley-Davidson as a result of what Mr. Verduyn
8 had determined?

9 MR. BENSON: I'm going to instruct the
10 witness not to answer.

11 MR. REHNQUIST: That's based on
12 attorney-client privilege?

13 MR. BENSON: Attorney-client privilege.

14 BY MR. REHNQUIST:

15 Q. Exhibit 24, Mr. Contois, is a letter dated
16 April 20th, 2004, from Jon Flickinger to John
17 Atwood.

18 And Exhibit 25 is a similar letter on the
19 same date from Mr. Flickinger to Mr. Atwood.

20 I'm just going to ask you if you've seen
21 either of these two letters before, the two
22 letters marked as Exhibits 24 and 25?

23 A. I don't recall.

EXHIBIT 12

Deposition of Steven R. Verduyn, 4/6/2005

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 -----
4 CYCLE-CRAFT CO., INC., d/b/a
5 BOSTON HARLEY-DAVIDSON/BUELL,

6 Plaintiff,

7 vs.

Civil Action No. 04 11402 NMG

8 HARLEY-DAVIDSON MOTOR COMPANY, INC.
9 and BUELL DISTRIBUTION COMPANY, LLC,

10 Defendants.
11 -----

12 Video Deposition of STEVEN R. VERDUYN

13 Wednesday, April 6th, 2005

14 10:09 a.m.

15 at

16 GRAMANN REPORTING, LTD.
17 710 North Plankinton Avenue, Suite 710
18 Milwaukee, Wisconsin

19
20 Reported by Sarah A. Reinicke, RPR/RMR/CRR
21
22
23
24
25

Deposition of Steven R. Verduyn, 4/6/2005

1 the record?

2 MR. REHNQUIST: We may.

3 (Pause in proceedings.)

4 THE VIDEOGRAPHER: We're back on the record
5 at 11:33 a.m.

6 BY MR. REHNQUIST:

7 Q Mr. Verduyn, how long have you been working at
8 Harley-Davidson?

9 A Just over 12 years.

10 Q And what is your current position?

11 A My job title is manager of credit programs.

12 Q And do you also have responsibilities for -- in sort
13 of -- for lack of a better term, enforcement of the
14 nonretail sales policy? And by that I mean sort of
15 the inquiries and reviews into potential nonretail
16 sales policy violations that we've been talking
17 about.

18 A Yes, I do.

19 Q And if I use the term sort of "enforcement
20 procedures" or "enforcement policies," will you
21 understand what I'm talking about?

22 A Can you give me your -- again, your kind of
23 definition of that?

24 Q What would you call it? What would you call the --
25 your responsibilities for conducting --

Deposition of Steven R. Verduyn, 4/6/2005

1 A Investigation.

2 Q Investigation?

3 A Um-hmm.

4 Q Investigation into nonretail sales policy violations.
5 Okay, when did you first assume the responsibilities
6 that you have today for investigating potential
7 nonretail sales policy violations?

8 A There was no formal date, per se. I became involved
9 with it approximately five, six years ago.

10 Q And how does it relate to your other responsibilities
11 as the manager of credit programs?

12 MR. BERKOWITZ: Objection. If you could be
13 more specific, I can withdraw the objection.

14 THE WITNESS: Yeah, I don't so much
15 understand the question.

16 BY MR. REHNQUIST:

17 Q Well, how did you come to take on responsibilities
18 for investigation of potential nonretail sales policy
19 violations?

20 A As best I can recall, I was asked to review paperwork
21 that had been sent in by a dealer on a different
22 inquiry.

23 Q Who asked you to do that?

24 A As best I can recall, it would have been the director
25 of that area, DFO.

Deposition of Steven R. Verduyn, 4/6/2005

1 Q And do you have an understanding as to why this
2 person asked you?

3 A I can surmise.

4 Q Please.

5 A My primary function at Harley-Davidson had been and
6 to a degree still continues to be with handling
7 matters of wholesale financing of our product, of
8 collection-related activities, and work out
9 negotiations with dealers that find themselves in a
10 financial bind. It's paramount, critical that I have
11 a certain level of detail in what I do in examining
12 things and that I'm consistent in what I do and that
13 I understand the responsibilities and the rules and
14 programs around that.

15 Q So your belief is that the sort of -- the
16 characteristics and traits that you bring to bear in
17 dealing with work-outs and financial issues with
18 dealerships also lend themselves to having ability to
19 do the kinds of investigations necessary when there's
20 a suspect nonretail sale?

21 A In part. I have a reputation for impeccable
22 integrity and fairness in any capacity of work I've
23 been involved with. And I believe in my mind that
24 that certainly played a part in why I was asked to
25 begin examining these things and become involved in

Deposition of Steven R. Verduyn, 4/6/2005

1 this process.

2 Q After that sort of one off situation when you were
3 asked to follow up with a -- with a particular
4 dealer, was your role in these investigations ever
5 sort of more formalized?

6 A Just through the process of day-to-day business, I, I
7 guess, grew to be one of the primary people that was
8 involved with it. Through -- just through time and
9 through my experience in -- you know, that I learned
10 and gained by working with these matters over time
11 and having some experience in dealing with dealers
12 and with, you know, what can be difficult situations.

13 Q And are you sometimes called the gray market expert?

14 MR. BERKOWITZ: Objection. You may answer.

15 THE WITNESS: I don't know that I've ever
16 heard myself called that, but -- that specifically,
17 but I think that's fairly accurate.

18 BY MR. REHNQUIST:

19 Q Have Harley-Davidson's investigative procedures or
20 policies changed at all over time, to your knowledge?

21 A The nonretail policy has changed slightly over time
22 to address different market conditions and different
23 business opportunities as we've -- we've grown.

24 Q Have any of those changes in the policy itself caused
25 any change in the -- the methods or procedures that

Deposition of Steven R. Verduyn, 4/6/2005

1 A Yes.

2 Q And what are those?

3 A That a "Dear Dealer" letter is generally sent for
4 low -- relatively low numbers of sales or recommended
5 to be sent for low numbers of sales. High numbers of
6 suspicious sales, there will be a general
7 recommendation for an audit. And we've been fairly
8 consistent in how we administer that since I've been
9 involved with it.

10 Q Is the thing that triggers an audit the number of
11 suspected violations?

12 A That's one factor.

13 Q What other factors might lead to an audit?

14 A A concern that providing -- if we send a "Dear
15 Dealer" letter, we're asking for specific vehicle
16 identification number, sales, file information. In
17 an audit that information is not provided to the
18 dealer up front. And we do that generally for -- for
19 reasons that ensure the files remain complete, that
20 all the information's there, it's not misplaced or
21 otherwise adjusted, removed or anything else.

22 Q So do I understand you to be saying that if you think
23 the dealer might tamper with the evidence, you might
24 do an audit regardless of the number of suspected
25 sales?

Deposition of Steven R. Verduyn, 4/6/2005

1 At the top of my head.

2 Q Can you describe what information you typically look
3 to in doing an investigation for a suspected
4 violation of the nonretail sales policy?

5 A Is this for audit purposes or for --

6 Q No, no. Before you've come to the decision to do an
7 audit.

8 A I see.

9 Q Let's focus on the -- the investigation that would
10 precede an audit, if any.

11 A I understand. There would be a -- initially a cause
12 for me to examine an individual dealer's sales files
13 more closely. I don't randomly examine any given
14 dealer. There's not a schedule by which we look at
15 all dealers. We typically act on some kind of a
16 complaint. So I've got a foundation to -- to open an
17 investigation.

18 Q It's not like major league baseball?

19 A Pardon me?

20 Q It's not like major league baseball?

21 MR. BERKOWITZ: Like major league baseball
22 used to be.

23 THE WITNESS: Right. Way back when.

24 BY MR. REHNQUIST:

25 Q So your investigation would be triggered by some

Deposition of Steven R. Verduyn, 4/6/2005

1 reason?

2 A That's accurate. Correct. Yeah.

3 Q And when you say that you -- and I think you
4 mentioned that you would examine sales files -- well,
5 let's back up. I think you said first that there
6 would be some cause or some reason to begin your
7 investigation.

8 A That's correct.

9 Q Okay. Now, once the investigation is underway, what
10 sources of information would you typically look to?

11 A It would depend on the nature of the complaint.

12 Q Okay. Well, let's -- give me examples of the types
13 of reasons that would cause you to begin an
14 investigation.

15 A We receive a -- or a field -- most often our field
16 salespeople receive a complaint from another
17 dealership about an unauthorized motorcycle dealer
18 having new vehicles for sale in their market area.

19 Q And as part of that complaint, would there sometimes
20 be an effort from the other dealer to track down the
21 VIN that might be on display at the unauthorized
22 dealer?

23 A That's possible.

24 Q Okay. What other reasons would cause you to begin an
25 investigation? And did you say that's the most

Deposition of Steven R. Verduyn, 4/6/2005

1 typical one?

2 MR. BERKOWITZ: Object.

3 THE WITNESS: One of the most.

4 BY MR. REHNQUIST:

5 Q Okay.

6 A I routinely review motorcycles for sale on EBay.

7 Q How long have you been doing that?

8 A Approximately three years. Two to three years.

9 Q Would -- the motorcycles for sale on EBay, would they
10 have a VIN, or do they sometimes have a VIN?

11 A In some cases.

12 Q And if you can get the VIN from EBay, you can look in
13 your own records and determine where that was sold or
14 who was the record purchaser of that?

15 A That's correct.

16 Q Okay. What other reasons or causes would lead you to
17 begin an investigation?

18 A Multiple sales by a dealer to the same individual in
19 a short period of time.

20 Q And how would you determine that? In other words,
21 how would multiple sales to an individual be brought
22 to your attention, or how would you learn of it?

23 A That would be generally a part of my investigation.
24 I would be provided with a name or a VIN number,
25 enter that into our sales warranty registration

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1 system, and that would give me a purchaser name. I
2 can then search the system by purchaser name for
3 multiple sales.

4 Q Okay. But I mean, at this time you're talking about
5 what you would do in the course of an investigation.
6 I wanted to try to figure out what are the reasons
7 that would lead you to actually begin an
8 investigation?

9 A Well, that is a reason.

10 MR. BERKOWITZ: He said a name could be
11 provided to him that would cause him to start an
12 investigation. I think that was what the response
13 was.

14 BY MR. REHNQUIST:

15 Q Okay. A name could be provided to you by whom?

16 A It could be a dealership, field salesperson, a
17 dealer.

18 Q Why would a field salesperson or a dealer give you a
19 name to review?

20 A Because they are conducting business out in that area
21 and would be familiar with those people that are
22 involved in gray market or nonretail-type activities.

23 Q So this could be a name of a business or an
24 individual?

25 A It could be either.

Deposition of Steven R. Verduyn, 4/6/2005

1 Q Okay. What else? What other -- what other event
2 would cause you to begin an investigation?

3 A A substantial number of sales at the end of our model
4 year, typically within the last week or the last
5 couple days of our model year.

6 Q Why would that be a cause for you to begin an
7 investigation?

8 A A dealer has an incentive to have all their
9 motorcycles retail sold by July 31st in order to earn
10 allocation credit for the following year.

11 Q Okay. So why would -- I understand that. Why would
12 a substantial number of sales at the end of a model
13 year cause you to begin an investigation?

14 A It is an inconsistent sales -- sales trend to see a
15 dealer sell a substantial portion or percentage of
16 their allocation that was shipped to them throughout
17 an entire model year, to see that reported as retail
18 sold in a time frame of a week or less.

19 Q Why? I mean, I would imagine -- correct me if I'm
20 wrong, but isn't it the case that because the dealers
21 have this incentive to sell their allocation by the
22 end of the model year, that they would reduce prices?

23 A That's possible.

24 Q Isn't that probable?

25 MR. BERKOWITZ: Objection, calls for

Deposition of Steven R. Verduyn, 4/6/2005

1 speculation. But you may answer.

2 THE WITNESS: I believe some dealers do
3 that.

4 BY MR. REHNQUIST:

5 Q I mean, if you were going to buy a Harley-Davidson
6 motorcycle, wouldn't you try to do it in late July?

7 A Not necessarily.

8 Q Isn't that when prices are apt to be the lowest?

9 A Probably. Most likely.

10 Q So why would a large volume of sales at the end of a
11 model year cause you to do an investigation? In
12 other words, I guess what I'm saying is, why is a
13 large volume of sales at the end of the model year
14 something that would raise a red flag?

15 A Because we've shipped that allocation to the
16 dealership over the previous about 11 to 12 months,
17 and they've had that opportunity to sell through in
18 that time frame. The peak Harley sales season is
19 early spring in most parts of the country. We would
20 expect that dealers, especially ones that have been
21 in business for a while and have some experience with
22 it, would have started seeing and forecasting the
23 fact that they're coming up on a model year to have
24 started -- in your example, if they're going to
25 adjust prices, to start doing that earlier in the

Deposition of Steven R. Verduyn, 4/6/2005

1 year so that they're not facing a situation of a very
2 high level of inventory when it gets down to when
3 they have to have that sold for allocation purposes.

4 Q Well, in a perfect world, of course, the dealer
5 wouldn't be faced with a situation towards the end of
6 a model year where they have a lot of inventory they
7 have to move. But isn't it the case that dealers
8 often sell a substantial amount of their inventory
9 towards the end of the model year?

10 A The bulk of dealer sales that I see occur the last
11 typically four to five months of the model year, not
12 the front six or seven. That's primarily due to the
13 fact that motorcycles are a very seasonal product and
14 half the country is covered in snow and you can't
15 ride a motorcycle. There's a shorter window, so we
16 see very large spikes of sales in the spring.

17 Q How many times have you commenced an investigation
18 based on evidence of a large volume of sales towards
19 the end of the model year?

20 A I don't have an exact number, but that is a trend
21 that I do see with some regularity in the ones that I
22 have investigated in the past. It's a telltale
23 potential sign. And that in and of itself, the fact
24 that there are a large number of sales in July,
25 doesn't automatically mean that there's a problem.

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1 But when we've got other issues or information that's
2 come to our attention on a particular dealership,
3 it's another reason to believe that an audit's
4 probably the way to proceed.

5 Q And by audit, do you mean an investigation? Or, I
6 mean, are you using the term "audit" to include an
7 investigation as opposed to the formal on-site audit
8 at the dealership?

9 A Let me clarify. An audit would be a review of the
10 records prior to making a determination of a course
11 of action.

12 Q Would a large volume of sales towards the end of the
13 model year without anything else cause you to begin
14 an investigation? In other words, when I say without
15 anything else, without other reasons to suspect
16 nonretail sales?

17 A No, not that I can think of.

18 Q Can you think of any other reasons or any other
19 events that would lead you to begin an investigation
20 of a dealership for potential violations?

21 A Yes.

22 Q What?

23 A A number of sales that show that particular vehicle
24 as being resold for a second time in a very short
25 duration.

Deposition of Steven R. Verduyn, 4/6/2005

1 Q And how would that come to your attention?

2 A As part of the investigation or background that I
3 would do.

4 Q Okay. I'm not trying to confuse you here, but I'm
5 trying to figure out -- I understand that's something
6 that you might discover in the course of an
7 investigation.

8 A Okay.

9 Q What I'm trying to focus on here is the things or the
10 events that would actually lead you to begin an
11 investigation.

12 A Okay.

13 Q And I understand there's -- I want to get to what you
14 look to in an investigation in a minute.

15 A Okay.

16 Q But you've mentioned a few things here that would
17 cause you to begin an investigation. I'm just trying
18 to see if there's anything else you can think of.

19 A Nothing else that I can think of at the moment.

20 Q Okay. Once you've decided to begin an investigation,
21 what -- you know, what would you typically do? What
22 investigative activities would you typically
23 undertake?

24 A That is limited, at least initially, to my requesting
25 a consolidated spreadsheet-type report of all of the

Deposition of Steven R. Verduyn, 4/6/2005

1 dealer's reported sales for a given period of time.
2 Customer information basically on all the sales in
3 that given period.

4 Q And this would be a spreadsheet of the SWR
5 information essentially?

6 A Correct.

7 Q So that's sort of the first thing you would -- well,
8 is it fair to say that's the first thing you would do
9 after you decided to begin an investigation?

10 A Yes.

11 Q And I gather you would review that spreadsheet of
12 SWRs looking for certain things?

13 A That's correct.

14 Q And what would you look for?

15 A As discussed earlier, a substantial number of sales
16 at the end of the model year. And typically I will
17 limit even that to the last week of the model year.

18 Q By what time of year would the -- I mean, you know,
19 for example, is there any kind of a lag time in the
20 ability of someone to assemble the kind of
21 spreadsheet you're talking about? For example, if
22 you wanted to find the -- a spreadsheet of a
23 particular dealer for the model year ending
24 July 31st, 2005, could you get that on August 1st of
25 2005?

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- 1 A I could get that. It may not be complete as -- I
2 don't know that the dealer has submitted all the
3 sales warranty registration forms for any vehicles
4 they may have sold within the previous couple days.
5 I can get a report of whatever we have in our system.
6 Q So there's no turnaround in the actual -- the system.
7 It's just a question of whether the dealer has
8 actually electronically submitted the SWRs?
9 A The only potential delay that I could think of would
10 be in my -- I don't pull the requests. I ask another
11 person to pull them for me. And if they would be out
12 of the office or otherwise tied up momentarily. But
13 assuming that they're there, I can have the report
14 within minutes.
15 Q And that's typically Diane Bolden?
16 A That's correct.
17 Q The dealer, as I understand it, has ten days to
18 electronically submit the SWR information after the
19 sale; is that correct?
20 A My understanding, that's federal law. National
21 Highway Transportation Safety Administration law.
22 Q But is that your understanding of what
23 Harley-Davidson's policy is as well?
24 A Yes.
25 Q Do dealers sometimes submit the electronic SWR

Deposition of Steven R. Verduyn, 4/6/2005

1 information after ten days, to your knowledge?

2 A I have seen it.

3 Q Is that rare?

4 A I would say most of our dealers do submit certainly
5 within the ten days, and most do it that day or the
6 day after the sale.

7 Q And what else would you do in -- you know, once the
8 investigation is underway, you would get the
9 spreadsheet of the SWR information, and you would
10 review the spreadsheet for -- for various things.
11 And I think one thing you said you would look for
12 would be a high volume of sales at the end of the
13 model year. What else would you review the
14 spreadsheet for?

15 A There are other things that I would look for. Sales
16 that have been reported as resold in a very short
17 period of time.

18 Q What else?

19 A Sales to employees or what would appear to be family
20 or family related that occurred right at the end of
21 the model year.

22 Q Why would that be a red flag?

23 A The employee has had a chance, as does anyone, to buy
24 motorcycles for, you know, the entire course of the
25 model year. And I have seen in past cases -- in my

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1 experience in investigating these things for the last
2 several years cases where dealer management has used
3 employee names to submit to us without the employee's
4 knowledge in order to pick up and earn allocation
5 credit on vehicles that weren't really sold.

6 Q What dealers submitted employee names without the
7 employee's knowledge? Do you recall?

8 A I would have to look at the individual records of
9 those that I've -- I've audited to -- in cases where
10 we have found nonretail activity, that is a
11 relatively common thing to see.

12 Q In those cases how did you determine that the
13 employer submitted the employee's name without the
14 employee's knowledge?

15 A At the point of investigation I haven't made that
16 determination. The only thing that I've determined
17 is that a sale was reported to the Motor Company to
18 an employee.

19 Q I understand. But I believe you testified that in
20 the course of some of the reviews that you've done in
21 the past --

22 A Um-hmm.

23 Q -- you've run into situations where the employer has
24 submitted an SWR for the -- in the employee's name
25 without the employee's knowledge. And I'm asking in

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1 investigation of a -- of a dealer for suspect
2 nonretail sales in addition to or after you had done
3 this analysis of the SWR spreadsheet? And, again,
4 I'm saying in the typical case.

5 A Uh-huh. Usually that will be the extent of the
6 initial investigation on a particular dealer.

7 Q And is that because once you've done the -- well,
8 withdrawn. I think you said the first phase or the
9 first part of an investigation. Would subsequent
10 parts of the investigation follow your analysis of
11 the spreadsheet?

12 A Yes.

13 Q And what would those be?

14 A Based on the number of sales that I flagged as
15 questionable or suspicious in nature, I would make a
16 recommendation on either doing nothing, sending a
17 letter, or conducting an audit.

18 Q At this point would you always confer with someone
19 else before deciding what the next step was? Or
20 would you -- take away the always. Would you
21 typically after having done your analysis of the
22 spreadsheet confer with someone else about the next
23 step?

24 A Yes.

25 Q Who?

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1 A In most cases or typically it would be with the DFO
2 for that respective region.

3 Q And was it the DFO who had the final authority to
4 decide what the appropriate next step was?

5 A I don't know.

6 Q Well, putting aside whether it was, you know, sort of
7 authority as a matter of policy or law. In practice
8 was it your understanding that it was the dealer who
9 would make the decision as to what the appropriate
10 next step was?

11 MR. BERKOWITZ: You said dealer.

12 BY MR. REHNQUIST:

13 Q Sorry. The DFO, not the dealer.

14 A They -- generally they would. Now, I don't know if
15 they had conferred with others outside of my initial
16 giving them the list of questionable VINs or
17 explaining to them that I had a number of
18 questionable sales.

19 Q And what was the -- I gather if the decision was to
20 do an audit, then you would -- you or someone else
21 would proceed to do an audit. If the next step was
22 nothing, you would do nothing. And in the event of
23 sending a letter, this would be the sort of "Dear
24 Dealer" letter that we've talked about before?

25 A Correct.

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1 substantial.

2 Q I mean, were you marking this confidential so that
3 Mr. Malicki and Mr. Contois would be careful with the
4 information? Or were you marking this E-mail as
5 confidential so that other people at Harley would be
6 careful with the information?

7 A No. It was intended solely for Mike and Al. At that
8 point I hadn't copied anyone else on it, so I don't
9 know who -- who else would -- would get it.

10 Q Had you dealt with Al Contois and Mike Malicki before
11 on investigations like this?

12 A Mike, yes. And Al, I can't recall.

13 Q You note in your E-mail a sale to a Disimone or
14 Disimone, D-I-S-I-M-O-N-E. Do you see that?

15 A Um-hmm.

16 Q And you say, "There is a Thomas and Jeanette Disimone
17 that own a large after-market shop in New York State
18 that I have dealt with on other gray market
19 activity." Do you see that?

20 A Yes.

21 Q Had dealers been advised in any way to look out for
22 Disimones or either of the Disimones as potential
23 purchasers of Harley bikes?

24 A Not to my knowledge.

25 Q To your knowledge, had dealers ever been given any

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1 advice or warnings about certain gray market
2 purchasers to avoid dealing with?

3 A They were not given lists of specific individuals to
4 avoid.

5 Q Did you ever participate in any discussions at
6 Harley-Davidson about whether or not that would be a
7 good idea?

8 A Yes.

9 Q With whom did you discuss that?

10 A Counsel.

11 Q Who?

12 A Jenny Kent.

13 Q Anybody else?

14 A Christine Hansen.

15 Q Anybody else?

16 A Gene Ostrum.

17 Q Is he counsel?

18 A No. Gene's not counsel.

19 Q Did you discuss it with Gene Ostrum outside the
20 presence of counsel?

21 A No, not that I recall.

22 Q Is this one particular meeting or conversation that
23 you're thinking about?

24 A There were more than one.

25 Q When did these conversations occur?

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1 A A year or two years ago. I don't -- I don't have an
2 exact date.

3 Q And did you discuss this matter with counsel because
4 you were seeking legal advice?

5 A Yes.

6 Q Did you initiate the conversation with counsel, or
7 did counsel initiate the conversation with you?

8 A Which conversation?

9 Q Well, how many conversations were there?

10 A There were a couple meetings.

11 Q Let's talk about the meetings first. Who initiated
12 the meetings?

13 A I would have been proactive with those in asking that
14 those be set up.

15 Q And who did you go to to set up such a meeting?

16 A The attorney on staff at the time. Initially it was
17 Chris Hansen.

18 Q And did you go to -- did you initiate a meeting with
19 counsel because you thought it would be a good idea
20 to disclose the names of gray market actors to
21 dealers?

22 MR. BERKOWITZ: Objection. Calls for
23 attorney/client privileged communication. I instruct
24 you not to answer.

25 MR. REHNQUIST: I'm asking him why he

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1 decided to go to counsel.

2 MR. BERKOWITZ: Right.

3 MR. REHNQUIST: I'm not asking for any
4 communication with counsel at all. I'm asking why he
5 made the decision to seek advice of counsel, and that
6 is, I don't believe, privileged.

7 MR. BERKOWITZ: I believe it is, and I'm
8 going to stand by the instruction.

9 BY MR. REHNQUIST:

10 Q Are you going to follow your counsel's instruction?

11 A Yes.

12 Q Did you -- did you initiate a meeting with counsel
13 because you thought it would be a bad idea to share
14 gray market information with dealers?

15 Go ahead. I'm setting the record. Go
16 ahead. You can instruct him.

17 MR. BERKOWITZ: All right. I object to the
18 question and instruct you not to answer.

19 BY MR. REHNQUIST:

20 Q Are you going to follow the instruction?

21 A Yes.

22 Q Did you form an opinion on whether disclosing
23 information regarding gray market actors to dealers
24 would be a good idea before you sought a meeting with
25 counsel?

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1 MR. BERKOWITZ: You can answer.

2 THE WITNESS: Can you repeat the question,
3 please?

4 BY MR. REHNQUIST:

5 Q Yeah. Before initiating a meeting with counsel, did
6 you form an opinion or make a recommendation as to
7 whether it would be a good idea or not for
8 Harley-Davidson to disclose to dealers the identity
9 of gray market actors?

10 A In my own mind, yes.

11 Q And what was that -- what was the view that you
12 developed in your own mind?

13 A It was my opinion that that information should be
14 shared.

15 Q Why?

16 A To stem the growth in nonretail sales activity to
17 certain brokers, certain common last name people that
18 were appearing throughout the country buying bikes.

19 Q Was Lee Custom Cycle one of those?

20 A No.

21 Q Did you discuss your view on this matter with anyone
22 else at Harley-Davidson before you initiated a
23 meeting with counsel?

24 MR. BERKOWITZ: Other than counsel?

25 MR. REHNQUIST: Well, yeah. Sorry.

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1 Q Al -- when you referenced that you had done a little
2 digging in this E-mail of August 11, are you
3 referring to doing some analysis of the SWR
4 spreadsheet, or do you recall if it was something
5 else that you did?

6 A Something else.

7 Q What did you do?

8 A The VIN numbers provided by Ed Moulton were
9 incomplete. I had to develop the VIN number based on
10 just the last six. So I had to work various
11 combinations to find a valid VIN number. When I had
12 that valid VIN number, I entered that information
13 into the sales warranty registration system to tell
14 me who the reported purchaser was and who the
15 reported selling dealer was.

16 Q Contoise responds to your E-mail with his reply to
17 you, CC Mike Malicki and Dave Hall, on August 11th,
18 and he says, "My suggestion would be to send a "Dear
19 Dealer" letter to both dealers." Do you see that?

20 A I do.

21 Q Why was that not ever done?

22 MR. BERKOWITZ: Objection. You can answer.

23 THE WITNESS: I don't know.

24 BY MR. REHNQUIST:

25 Q Was a "Dear Dealer" letter sent to Cycle-Craft prior

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1 to the termination letter, to your knowledge?

2 A Not to my knowledge.

3 Q Do you recall having any discussions with anyone at
4 Harley-Davidson about whether to send a "Dear Dealer"
5 letter to Cycle-Craft?

6 A I don't recall any discussions.

7 Q Does it surprise you to see that both Al Contois and
8 Mike Malicki were in favor of sending a "Dear Dealer"
9 letter to Cycle-Craft and that was never done?

10 A It does not surprise me that they were in favor of
11 sending the letter to him. It does surprise me that
12 the letter didn't go out.

13 Q And you don't recall why it did not go out or -- and
14 you don't recall having any discussions about it?

15 A In all honesty, I probably dropped the ball on it.
16 Got caught up in other things and didn't follow
17 through.

18 (Exhibit 18 marked for identification.)

19 BY MR. REHNQUIST:

20 Q Mr. Verduyn, this is Exhibit 18. It's Bates stamped
21 H-D 1658 to 1676. And just -- if you want to just
22 spin through this and see if you know what these
23 documents are.

24 A I'm familiar with the documents.

25 Q What are they? First of all, let's put aside the

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1 documents that showed that you had, you know, done an
2 initial spreadsheet analysis in late July. With that
3 sort of framework, do you recall where you were, if
4 anywhere, in your investigation on or about
5 October 24th?

6 A At that point I believe that there had been a
7 decision to audit. And, you know, I was in the
8 process of gathering or continuing to gather
9 information about that.

10 Q Do you recall that at some point in time a decision
11 was made to conduct an audit?

12 A Yes.

13 Q And do you recall when that decision was made with
14 respect to the actual dates of the audit, which was I
15 think February 17th and 18th of '04?

16 A Can you --

17 Q Yeah. Do you recall when the decision to audit was
18 made? Not necessarily the exact date, but how far in
19 advance of the actual audit?

20 A Several months.

21 Q Who was involved in the decision to do an audit?

22 A Mike Malicki.

23 Q Anyone else?

24 A There may have been. I don't recall. I know that
25 Mike certainly would have been. The others, I --

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1 A To the best of my knowledge, I forwarded everything I
2 had to counsel at counsel's request.

3 Q Have you had any involvement in producing documents
4 in connection with this litigation other than
5 providing your own files to counsel?

6 A I don't understand your question.

7 Q Well, you just said that you provided your files to
8 counsel at counsel's request --

9 A Yes.

10 Q -- in connection with the -- in connection with the
11 production of documents in this litigation. Apart
12 from doing that, have you done anything else with
13 respect to producing documents in this litigation?

14 A Not that I can recall.

15 Q And, again, I believe your testimony was that
16 although the audit is not going to be done until the
17 middle of February, that you had made the decision
18 several months prior to February that an audit should
19 be done?

20 A I didn't make the decision. I made the
21 recommendation.

22 Q Do you recall your discussion with Mr. Malicki about
23 that recommendation?

24 A Very vaguely.

25 Q Did he ask you any questions?

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1 do?

2 A As I believed that this was a bulk sale to DCI, on or
3 around the time that this had occurred, in late '03,
4 the beginning of '04, the owner or at that time part
5 owner of DCI had -- she and her husband purchased a
6 Harley-Davidson dealership in the state of Louisiana.

7 Q When did you learn that?

8 A Again, late '03/beginning of '04.

9 Q Did you make any record of that? Did you maintain
10 any record of that in your -- in the papers that you
11 were doing in connection with the audit?

12 A I wouldn't have any reason to.

13 Q And how did that affect your analysis or your
14 conclusions?

15 A I looked to see if there was a connection of any sort
16 relative to these vehicles and the new dealership in
17 Louisiana.

18 Q And was there?

19 A In several cases there was.

20 Q What was the connection?

21 A The dealership in Louisiana had several of these
22 vehicles on their floor plan account with
23 Harley-Davidson financial services. That told me
24 that they had purchased the vehicles from someone
25 else and had them, as we hadn't shipped the bikes to

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1 them, they hadn't went to Louisiana.

2 Q Why isn't what you saw from the data consistent with
3 a brokered transaction?

4 MR. BERKOWITZ: Objection.

5 BY MR. REHNQUIST:

6 Q Do you know what I mean by that?

7 A Can you clarify that for me?

8 Q Well, how could you eliminate the possibility in your
9 analysis that DCI had arranged for the bikes to be
10 purchased by individuals who were known to DCI?

11 A I wouldn't have any knowledge of what DCI's business
12 dealings with retail customers are, as DCI is not an
13 authorized Harley-Davidson dealership.

14 Q No, but how could you eliminate the possibility in
15 your analysis that DCI had not acted as a broker or
16 kind of a go-between to arrange for the purchase by
17 the 19 individuals of these motorcycles from Boston
18 Harley-Davidson?

19 A Because had they simply acted in a broker or a finder
20 capacity, it's extremely unlikely that each of those
21 19 customers would have all went to the same bank in
22 Florida, gotten a cashier's check from that bank in
23 Florida, all went to Cycle-Craft Harley-Davidson on
24 the very same day, made purchases of new motorcycles
25 and brought them all back down to Florida.

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1 Q Well, why couldn't DCI have arranged for the
2 cashier's checks to be obtained from the bank and
3 delivered the checks to Harley-Davidson and accepted
4 the motorcycles from Boston Harley-Davidson on behalf
5 of the individual purchasers?

6 MR. BERKOWITZ: Objection. You may answer.

7 BY MR. REHNQUIST:

8 Q Do you understand the question?

9 A I understand it, but it doesn't -- in my capacity it
10 doesn't make a bit of difference as you have just
11 very clearly described a violation of the nonretail
12 sales policy by Boston Harley-Davidson had they done
13 that as you've described.

14 Q And in what ways would that -- let me rephrase the
15 question. If in fact DCI had arranged for the
16 purchase by these 19 individuals of the motorcycles
17 from Harley-Davidson, including sending the checks to
18 Boston Harley-Davidson and arranged -- sending the
19 checks to Boston Harley-Davidson and arranged for the
20 motorcycles to be shipped to DCI in Florida, how
21 would that have violated the Harley-Davidson
22 nonretail sales policy?

23 A The customer -- because it is -- by definition it's
24 not a retail sale. The customer did not conduct
25 their business directly with Boston Harley-Davidson.

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1 They went to another party. It was a brokered sale.
2 The nonretail sales policy is very clear, that the
3 customer must take retail delivery of that vehicle at
4 the dealership and complete all paperwork at the
5 dealership. Under your scenario that didn't happen.
6 Q So it is your testimony that the transaction as I
7 have described it would have violated the nonretail
8 sales policy because the customer did not receive the
9 bike at Boston Harley-Davidson?

10 MR. BERKOWITZ: Objection.

11 BY MR. REHNQUIST:

12 Q That's at least -- is that correct?

13 MR. BERKOWITZ: Objection. You can answer.

14 MR. REHNQUIST: Basis?

15 MR. BERKOWITZ: Misdescribes the witness's
16 testimony.

17 BY MR. REHNQUIST:

18 Q I'm not trying to describe your testimony. I'm just
19 trying to ask a question.

20 MR. BERKOWITZ: He listed several things,
21 and you only pointed out one. That was the basis for
22 the objection. But go ahead.

23 BY MR. REHNQUIST:

24 Q I want to make sure I understand every way you
25 believe that type of a brokered transaction would

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1 violate the nonretail sales policy. And I believe
2 you testified that one way that type of transaction
3 would violate the nonretail sales policy would be
4 that the customer did not receive the bicycle at the
5 dealership facility; is that correct?

6 MR. BERKOWITZ: Motorcycle.

7 THE WITNESS: Would have been a motorcycle,
8 but that's correct.

9 MR. REHNQUIST: What did I say?

10 MR. BERKOWITZ: Bicycle.

11 MR. REHNQUIST: Sorry.

12 MR. BERKOWITZ: It's a long day.

13 BY MR. REHNQUIST:

14 Q Apart from not receiving the motorcycle at the
15 dealership facility, how else would that type of
16 brokered transaction violate the nonretail sales
17 policy?

18 A Again, by definition if we bring the word "broker"
19 into the chain, it is clearly nonretail. The point
20 and reason that we have the nonretail sales policy in
21 effect is to protect our customers, to ensure that
22 our end user customers have a positive dealership
23 experience and a positive experience with
24 Harley-Davidson. When we involve nonretail activity
25 and brokers and third-parties, we've lost that

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1 control.

2 Q Any other ways in which that transaction would
3 violate the nonretail sales policy?

4 A There was -- the nonretail sales policy has a
5 provision in it that says that for a sale made out of
6 state, the dealer will provide title and registration
7 for that vehicle. If they do not or cannot, that
8 vehicle is deemed to have been sold in violation of
9 the nonretail sales policy.

10 Q Anything else?

11 A If my recollection is correct, the predelivery
12 inspection forms were not in every case complete and
13 checked off and/or appropriately signed by customers
14 and/or dealership personnel. That would leave open
15 the possibility that the vehicles had not been either
16 completely predelivery inspected, safety checked, and
17 the customer had not been provided with a copy of
18 that document or any other important documents,
19 including an owner's manual and information regarding
20 any of the other benefits to owning a Harley. This
21 goes straight to why we have the nonretail sales
22 policy in effect and insist that the customers
23 themselves come to the dealership.

24 Q Are you saying that the nonretail sales policy
25 requires that the customer sign the setup and

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1 inspection form?

2 A The customer is to be provided with a copy of that.

3 I can't recall -- if you've got one, we can take a

4 look at it. At the top of my head I cannot recall

5 the specific signatures and lines on that form.

6 Q Are you aware of any language in the dealer contract

7 that prohibits a brokered transaction such as the one

8 I've just described?

9 A My expertise in dealing with the dealer contract is

10 extremely limited.

11 Q Would it change your conclusion in any way if you

12 learned that DCI in fact did attempt to obtain titles

13 to these 19 motorcycles in the names of the 19

14 individuals that were on the SWRs?

15 A It would make me even more suspect of the

16 transactions.

17 Q Did it matter to you in drawing the conclusions that

18 you drew whether or not DCI had deceived or misled

19 Harley-Davidson as to whether these sales were to DCI

20 itself or to individuals?

21 MR. BERKOWITZ: Objection.

22 THE WITNESS: I don't really understand the

23 question.

24 BY MR. REHNQUIST:

25 Q Well, in reaching the conclusions that you reached,

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1 did you consider whether or not DCI might have
2 deceived or misled Harley-Davidson as to whether
3 these motorcycles were actually going to end up in
4 the hands of individuals as opposed to DCI itself?

5 MR. BERKOWITZ: Objection. Can you -- Jim,
6 maybe you didn't mean to say Harley-Davidson, but
7 your question is whether DCI deceived or misled my
8 client, Harley-Davidson.

9 MR. REHNQUIST: I'm sorry. Fair objection.
10 Fair objection. Your client is Harley-Davidson and
11 mine is Cycle-Craft. I promise not to forget that.

12 Q Mr. Verduyn, sorry. Did you consider in your
13 analysis of the DCI situation whether DCI might have
14 deceived or misled Boston Harley-Davidson as to who
15 would be the ultimate user of the motorcycles?

16 A I believe that Boston Harley-Davidson knew the
17 circumstances around the sale and that this was a
18 brokered sale.

19 Q What do you mean a brokered sale?

20 A It was a bulk sale to a broker. The motorcycles were
21 not sold by Boston Harley-Davidson directly to the
22 people that Boston Harley-Davidson told
23 Harley-Davidson Motor Company had purchased those
24 bikes.

25 Q So it didn't matter to you if -- withdrawn. It

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1 didn't matter to you whether DCI had told Boston
2 Harley-Davidson that these motorcycles were going to
3 end up in the hands of individuals? That didn't
4 matter to you?

5 MR. BERKOWITZ: Objection. You can answer.

6 THE WITNESS: The point of my investigation
7 wasn't to determine what DCI might have told Boston
8 Harley-Davidson. It was to determine whether Boston
9 Harley-Davidson had provided false or misleading
10 information to the Motor Company and whether or not
11 they had violated their -- their dealer contract or
12 the nonretail sales policy.

13 BY MR. REHNQUIST:

14 Q And your conclusion was that this was a violation of
15 the policy because you believe that Boston
16 Harley-Davidson -- well, withdrawn. You concluded
17 that it was a violation of the policy for -- among
18 other reasons, because you believe that Boston
19 Harley-Davidson knew that this was a transaction in
20 which DCI was acting simply as a broker?

21 MR. BERKOWITZ: Objection. You may answer.

22 THE WITNESS: That they knew it was a
23 broker or not doesn't in my mind or help me drawing
24 my conclusion stray from the fact that what Boston
25 Harley-Davidson did was misrepresent what happened to

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1 19 motorcycles.

2 BY MR. REHNQUIST:

3 Q And what specifically was the misrepresentation that
4 Boston Harley-Davidson made as to these 19
5 motorcycles?

6 A That they were the dealership that sold 19
7 motorcycles on July 30th of 2003 to individual retail
8 customers living in the state of Florida.

9 Q And why was that false?

10 A We had -- through the investigation, we had obtained
11 documentation that those transactions didn't happen
12 at the dealership and that those motorcycles were not
13 purchased for retail purposes by those people that we
14 had been told -- that Harley-Davidson had been told,
15 were the ultimate end users.

16 Q Let's go back to the Lee Cycle pile, Lee Custom Cycle
17 pile. What observations did you make about the Lee
18 Custom Cycle transactions?

19 A The original complaint and reason that we looked
20 at -- or that I looked at Boston Harley-Davidson's
21 sales records was as a result of a complaint made
22 that cited two specific -- three specific parts of
23 vehicle identification numbers. I was able to get
24 full vehicle identification numbers. Those customer
25 names were included on those sales that I wished to

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1 audit or examine.

2 When I pulled those sales jackets out
3 of the file cabinet that they were in, immediately
4 one of the first things that I noticed about those
5 was the fact that they had written on the front in
6 marker on the front of the sale jacket either "Lee"
7 or "Lee Custom" near or next to the customer name.

8 Q Why was that significant?

9 A It substantiated Seacoast Harley-Davidson's
10 allegation that they had seen these vehicles for sale
11 at Lee Custom.

12 Q What other observations did you make about the Lee
13 Custom Cycle pile?

14 A Of that pile, all of the sales in that -- and there
15 were, I believe, six, seven or eight of them,
16 thereabout, all of them had that "Lee" or "Lee
17 Custom" written on the front of the file folders near
18 the customer name.

19 Q Anything else?

20 A Not that immediately comes to mind.

21 Q What determination -- did you make a determination
22 that the Lee Custom Cycle -- that the transactions in
23 the Lee Custom Cycle pile were transactions in which
24 the individual -- individuals listed on the SWR did
25 not take delivery of the motorcycle at Boston

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1 Harley-Davidson?

2 A I was -- based on what was in the file, I was unable
3 to make any clear conclusion on that.

4 Q Did you make any conclusion at all?

5 A Only that Lee Custom Cycles was somehow involved in
6 the sale of those motorcycles.

7 Q At the time you did the audit, had you learned
8 whether this fellow, Smith, that I think you
9 mentioned in the E-mail I showed you earlier was in
10 fact affiliated with Lee Custom Cycle?

11 A His name had surfaced before in other investigations
12 and things that I had done. And just that he was up
13 in the northeast part of the country. My
14 responsibilities for nonretail investigations is
15 country-wide. It involves every state. All that I
16 could recall was that Smith had operated up in that
17 area. We had had a problem with Smith before. And
18 that just in passing or at some time in the past I
19 had heard of Lee Cycles. But that was the extent of
20 it. Again, simply because I'm dealing with so many
21 dealers, so many things in addition to all my
22 responsibilities, you know, with finance and
23 credit-related matters, it was just a that name
24 sounds familiar. But I didn't draw any hard, firm
25 conclusions that tied Smith directly to Lee Custom.

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1 Q Apart from the fact that Lee -- the word "Lee" or
2 "Lee Custom" was written on the front of the jacket
3 in marker, what other evidence led you to the
4 conclusion that these six or eight sales were made in
5 violation of the nonretail sales policy?

6 A Aside from the fact that we had had a dealer
7 complaint about two of those, there was nothing else
8 that I can immediately remember.

9 Q How did you eliminate the possibility that one of the
10 individuals named on the SWR had purchased the
11 motorcycle from Boston Harley-Davidson and then
12 resold it to Lee Custom Cycle?

13 A Because it would have been an employee of Boston
14 Harley-Davidson that wrote Lee Custom on the file.
15 The customer wouldn't have had control on that.
16 There was no evidence in the sales files that the
17 customer had traded in or resold the vehicle, and no
18 one from Lee, to my knowledge, I would believe would
19 have access to Boston Harley files.

20 Q No, but what I'm saying is, regardless of what is
21 written on the file, how could you eliminate the
22 possibility that an individual from -- the individual
23 named on the SWR had purchased the motorcycle from
24 Boston Harley-Davidson and then later resold it --
25 you know, after July 31, '03 sold it to Lee Custom

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1 Cycle?

2 MR. BERKOWITZ: Objection. You can answer.

3 THE WITNESS: It's possible for them to do
4 that. A retail customer, assuming that they are a
5 retail purchaser, they're the ones that have then
6 taken the sale or taken the vehicle and decided what
7 they're going to do with it. A customer, a retail
8 customer, might purchase a bike because they like to
9 ride or because they've got a showroom or that
10 they're a Harley enthusiast. There's any number of
11 reasons that someone could purchase a bike or an
12 individual could purchase one.

13 BY MR. REHNQUIST:

14 Q Right. But in you doing your analysis, there was no
15 way for you to eliminate that individuals had in fact
16 come to Boston Harley-Davidson and purchased those
17 motorcycles.

18 A That's correct.

19 Q In other words, the only -- apart from the fact that
20 a couple of these motorcycles had ended up on the
21 showroom at Lee pursuant to the information you
22 received from Ed Moulton, the only thing that led to
23 your conclusion these were nonretail sales was the
24 fact that the word "Lee" was written on these sales
25 jackets; correct?

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1 A That would be correct.

2 Q Did you ever call any of the individuals that were
3 listed on the SWRs that you associated with Lee
4 Custom Cycle to see if they had purchased the
5 motorcycles from Boston Harley-Davidson?

6 A I did not.

7 Q Did you do any follow-up at all to see if any of
8 those individuals on the Lee Custom Cycle SWRs had in
9 fact purchased the motorcycles from Boston
10 Harley-Davidson?

11 A I'm not quite sure what follow-up I could have done.
12 It's not normal standard practice for me to follow up
13 on a sale after the fact.

14 Q So that would be a no in response to my question as
15 to whether you did any follow-up?

16 A Correct.

17 Q Let's go to the third pile, which was the -- I
18 believe you said the employee -- well, what was the
19 third pile?

20 A Employee, family, relatives.

21 Q And what observations did you make about the sales
22 that were documented in that pile?

23 MR. BERKOWITZ: Objection. You can answer.

24 MR. REHNQUIST: Basis?

25 MR. BERKOWITZ: It's not clear that any

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1 Withdrawn. Did anyone ask -- ask you to explain what
2 language in the nonretail sales policy had been
3 violated by these transactions or that you believed
4 had been violated by these transactions?

5 MR. BERKOWITZ: I'm going to object. I'm
6 going to instruct you not to answer. I think we do
7 have counsel in the room and I think we are now
8 crossing the line into matters that involve legal
9 counsel. And I am going to instruct you not to
10 answer that question.

11 BY MR. REHNQUIST:

12 Q Well, let me try to get at it a different way. And
13 you may get the same instruction. Was there any
14 discussion in the meeting regarding what language in
15 the policy you believed had been violated by these
16 transactions? And I'm simply asking you yes or no,
17 was there discussion on that subject?

18 MR. BERKOWITZ: You can testify as to
19 whether you have a recollection of there having been
20 or not having been discussion on that topic.

21 THE WITNESS: Yes.

22 BY MR. REHNQUIST:

23 Q There was discussion on that topic?

24 A Yes.

25 MR. REHNQUIST: And if I ask any further

Deposition of Steven R. Verduyn, 4/6/2005

1 just as a part of the building of the background on
2 what led to the audit itself.

3 Q What did you say about the building?

4 A Just that it had been -- he had told us that it had
5 been a run-down industrial or paint company or some
6 kind of a manufacturing company, dirty, rundown and
7 that they had built this large, beautiful building on
8 that site.

9 Q Did you agree that it was a large, beautiful
10 building?

11 A I would agree that it was large. I guess beauty is
12 in the eye of the beholder.

13 Q Well, how about in your eye? You've seen a lot of
14 dealerships, I assume.

15 A I have. It was nice, and it was clean, but it was
16 not one of the most beautiful dealerships I've been
17 in.

18 Q Was there any discussion in the meeting about what
19 sanction, should be -- if any, should be imposed upon
20 Cycle-Craft?

21 MR. BERKOWITZ: You can answer yes or no.

22 THE WITNESS: Yes.

23 BY MR. REHNQUIST:

24 Q What was that discussion?

25 MR. BERKOWITZ: Was counsel involved in

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1 that discussion?

2 THE WITNESS: Yes.

3 MR. BERKOWITZ: I instruct you not to
4 answer.

5 BY MR. REHNQUIST:

6 Q Was there any discussion in the meeting of any
7 sanction other than termination?

8 MR. BERKOWITZ: Was counsel involved in
9 that discussion?

10 THE WITNESS: Counsel was involved.

11 MR. BERKOWITZ: I instruct you not to
12 answer.

13 BY MR. REHNQUIST:

14 Q Was there any discussion in the meeting of
15 Harley-Davidson's history of enforcement of the
16 nonretail sales policy?

17 A Not that I can recall.

18 Q Was there any discussion of sanctions that had been
19 given to other dealers for violations of the
20 nonretail sales policy?

21 A Again, not that I recall.

22 MR. BERKOWITZ: We've been going about an
23 hour and 20 minutes. Whenever you can give us a
24 break.

25 MR. REHNQUIST: Yeah, I'm finishing a line

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 CYCLE-CRAFT CO., d/b/a
BOSTON HARLEY-DAVIDSON/BUELL,

5 Plaintiff,

6 vs. Civil Action No. 04 11402 NMG

7 HARLEY-DAVIDSON MOTOR COMPANY, INC.
8 and BUELL DISTRIBUTION COMPANY, 'LLC,

9
10 Defendants.

11
12
13 Video Deposition of STEVEN VERDUYN

14 Thursday, May 26th, 2005

15
16 9:54 a.m.

17 at

18 Gramann Reporting, Inc.
19 710 North Plankinton Avenue
20 Milwaukee, Wisconsin

21
22
23
24 Reported by Rosanne E. Pezze, RPR/CRR

Deposition of Steven Verduyn, 5/26/2005

1 nature is adversarial.

2 Q Have the DFOs -- has a DFO ever accompanied you on an
3 audit in addition to the Cycle-Craft audit?

4 A Not in addition to, no.

5 Q That's the only occasion where a DFO accompanied you?

6 A That's correct.

7 Q And what did Mr. Malicki tell you, if anything, as to
8 why he wanted to accompany you on the audit?

9 A He was interested in seeing how the process itself
10 worked in that I've been the individual at Harley
11 that's conducted the audits. This was a dealer
12 within his region, so he had an additional interest
13 in it for that, and he had the available time. It is
14 not uncommon that people express interest in
15 accompanying me on audits, more out of a curiosity
16 and an understanding standpoint.

17 Q Focusing on the 12 audits that are represented in
18 Exhibit 84, do you recall who accompanied you on the
19 audit of Zylstra Harley-Davidson in Elgin, Illinois?

20 A I believe I did that myself.

21 Q Do you recall who accompanied you on the audit of
22 Renegade Harley-Davidson in Alexandria, Louisiana?

23 A I had done that -- well, not directly accompanied me.
24 There was another person that was conducting a
25 separate audit at the same time in conjunction with

Deposition of Steven Verduyn, 5/26/2005

1 A Correct.

2 Q Who accompanied you on that one?

3 A My girlfriend.

4 Q What's her name?

5 A Kathryn Karn.

6 Q And does she work for Harley-Davidson?

7 A She does not.

8 Q How do you spell her name?

9 A Last name, K-A-R-N.

10 Q And why did she accompany you?

11 A Pleasure trip, vacation we extended after the time

12 out there and took some time and went up the Maine

13 coast.

14 Q It's nice that time of year, huh?

15 A Beautiful.

16 Q Did you tell anybody at Harley-Davidson that you were

17 bringing your girlfriend to do the audit?

18 MR. BERKOWITZ: Objection. You can answer.

19 THE WITNESS: I believe that I had told

20 Mike Malicki. I can't say with certainty, but I

21 believe so.

22 BY MR. REHNQUIST:

23 Q Did you tell him after you did this or before you did

24 this?

25 A I don't recall.

Deposition of Steven Verduyn, 5/26/2005

1 Q Did you seek permission from Mr. Malicki to bring
2 your girlfriend?

3 A No.

4 Q Is Mr. Malicki -- well, Mr. Malicki is not your boss,
5 correct?

6 A I don't report to him, however, he is at a level
7 superior to mine in terms of the management at
8 Harley.

9 Q Are you confident that he knows now that you brought
10 your girlfriend on that audit?

11 A Yes.

12 Q Have you been disciplined or reprimanded in any way
13 by the Motor Company for bringing your girlfriend on
14 the audit?

15 A No.

16 Q How long did the audit at Schott Harley-Davidson
17 last?

18 A I believe about two-and-a-half days.

19 Q Did you tell the principals of Schott that you met
20 with that -- did you introduce Ms. Karn to them?

21 A Yes, I did.

22 Q And did you tell them that this was your girlfriend?

23 A Yes.

24 Q They didn't have any objection to her assisting?

25 A Not --

Deposition of Steven Verduyn, 5/26/2005

1 least some of these.

2 Q Is it the case that on ten or 15 different occasions
3 Harley-Davidson Motor Company has given a dealer an
4 exception as it is described in these letters even
5 though there has been a determination by
6 Harley-Davidson that the non-retail sales policy has
7 been violated?

8 A That's correct.

9 Q To your knowledge under what circumstances has
10 Harley-Davidson given dealers an exception?

11 A As is stated in the correspondence to the dealers,
12 there are a number of reasons on why that could
13 occur.

14 Q What are they?

15 A They might include such things as the dealership
16 being very, very new, not having been in business for
17 a long time, so perhaps not being familiar with the
18 policies.

19 Q What other reasons?

20 A It may have been a single or very, very small number
21 of sales that the dealership made that it was of the
22 opinion that they acted in good faith when they made
23 those sales.

24 Q Other reasons?

25 A The dealership may have had a new employee who may

Deposition of Steven Verduyn, 5/26/2005

1 have handled the sales transaction and was not
2 familiar with the individual policy that prohibited
3 it.

4 Q Anything else you can think of?

5 A In general there's a provision in the policy that
6 allows the director of operations for that area to
7 grant an exception as they see or feel or deem fit.

8 Q Are you aware of any other reasons -- when you say
9 the director, do you mean the director of field
10 operations?

11 A That's correct.

12 Q And are you aware of directors giving exceptions for
13 any reasons other than the ones that you've just
14 stated?

15 A They would be the ones that made the decision. I
16 wouldn't know why they -- why they made any
17 particular decision that they did unless it's in a
18 letter on which I'm copied.

19 Q Are you aware of any decisions to give exceptions
20 that have not been communicated to the dealer in
21 letter form?

22 A None that immediately come to mind.

23 Q In other words, to the best of your knowledge, when a
24 decision is made to give a dealer an exception, there
25 is a letter sent to the dealer indicating that an

EXHIBIT 13

**NORTH END HARLEY-DAVIDSON INC.
594 ROUTE 3
PLATTSBURGH, NEW YORK 12901
800-445-1342
THOMAS WYAND , PRESIDENT**

January 11, 2005

**Mr. Mike Malicki
Director of Field Ops. Region 1
Harley-Davidson Motor Company
3700 W. Juneau Avenue
Milwaukee, WI 53201**

Dear Michael;

I am writing regarding the non-retail sales disputes, previously noted in your inquiries. I would have hoped that a final determination would have been made by this time since the brunt of the documentation was sent to your office in March and more in October of 2004, including titles on file with various states. As you know we are unable to register vehicles purchased from out of state as well as unable to force the owners to provide state registrations to us once their bikes are registered.

It is also not uncommon to have sales of multiple units to be purchased within the same family. I will list dozens of families who have purchased 3 and 4 units from me within a short period of time. So duplication of sales to the same family or family name is not uncommon. There are no red flags that go up when such buyers purchase in that manner, often bargaining quantity into a lower purchase price , accessory or labor discounts.

As for the bikes titled in Maine all units ,as previously mentioned, were sold at retail and titled in the state of Maine. Titles of the bikes were mailed to you along with other documentation we were able to produce. At that time individual state registrations were not asked for, I did not have them to produce and I do not have them now. I have 4 full time salesmen on my sales floor and Harley Sales Policy is standard training. I teach them to look for red flags and grey market sales, none of these buyers fit that criteria.

I will say again, if Harley - Davidson has a "list of names" that red flags Director of Field Operation why isn't such a list made available to dealers! If you have insider information that would be available to warn dealers of "suspected" grey marketers, why aren't we in the information loop? We are not highly suspect of every retail sale that comes walking

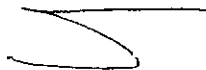
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through our door. Sales being what they are with new Harley units, it is not my policy to be confrontational with any retail buyer. We prefer to make the sales process as helpful and friendly as possible, and that sales dogma often brings back members of the same family.

At this point I would like to defer directly to my mea culpas, I am therefore sorry 100% of the required documentaion is not available. We are a small retail outlet in a city with a (declining) population of 15,000 people. To say the least we try to be more than helpful with family members who wish to purchase multiple units, Harley or otherwise. In this case we obtained title documentaion from them to insure that individual state sales taxes were paid. If a unit ends up being resold or available for resale after the fact I am sorry. I do not intend to put units up for sale in other markets and in fact that is why I get retail or retail plus for every unit I sell to a customer.

I fully understand Harley-Davidsons policys & intentions , however I do believe I followed proper checks and balances procedurally in the sales of all these units. If, down the road, Harley-Davidson comes to different conclusions after reviewing all the documentation I have provided then I will abide by your ruling in the matter. In the meantime I will continue to retail the marque as best as I believe I have these past 20 years, to a customer base we have developed through honesty, integrity and hard work. Thank You.

Sincerely,



Thomas Wyand
attached

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